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PASS TO USTR PAUL BURKHEAD
EB/CIP/BA ALAN GIBBS

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TAGS: PREL ETRD KIPR EFIN ECON BEXP KU

SUBJECT: USTR TALKS TIFA, IPR, TAXES, AT&T WITH KUWAITIS,
RESTATES LEGISLATIVE REFORM KEY TO FTA

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¶1. (SBU) Summary: On March 20, USTR Director of European and Middle Eastern Trade Affairs Paul Burkhead, accompanied by DCM and Econoff, met in separate meetings with senior representatives of the Kuwait Chamber of Commerce and Industry (KCCI), the Ministries of Commerce, Communications, Finance, and Information, and the Amir's Economic Advisor to follow-up on discussions held in Washington in February related to the Trade and Investment Framework Agreement (TIFA) process. Burkhead reiterated the need for Kuwait to pass stalled legislation that would bring intellectual property rights (IPR) protections in line with WTO standards, reform the taxation regime, and strengthen labor rights. He also offered USG assistance in reviewing legislation to ensure compliance with USTR expectations.

¶2. (SBU) Commerce Undersecretary Al-Ghanim, agreeing on the importance of passing new IPR and tax laws, proposed a TIFA Council meeting in Kuwait in the fall, a proposal later seconded by Amiri Advisor Al-Ebraheem who urged convening the meeting as early as May. Al-Ebraheem said that the TIFA/FTA process will help bring Kuwaiti laws into compliance with international standards and will be a boon for Kuwait in its position as a key player in Iraq's reconstruction. Al-Ebraheem suggested leaving discussion of the Arab League boycott to a later stage in the process, as its sensitivity in Kuwait would doom an FTA if raised too early. KCCI Deputy Director Al-Rabah stated that the Kuwaiti private sector is monitoring the TIFA process and looking at potential opportunities under an FTA. Al-Rabah encouraged reaching a quick FTA because parliamentary elections in 2007 could hinder legislative reform. Finance Assistant Undersecretary Al-Failakawi and his staff admitted problems associated with the current taxation law, but said that a new draft law has been submitted to Parliament. Ministry of Information Assistant Undersecretary Al-Nouh said the amendments to the TRIPS-incompliant copyright law are still being drafted and that the interministerial IPR committee will meet in April to review the structure of IPR inspection teams. Communications Director of Operations for the Information Sector al-Zabin said his Ministry was working closely with AT&T to resolve the billing dispute. End summary.

A Flurry of Meetings...

¶3. (SBU) On March 20, USTR Director of European and Middle Eastern Trade Affairs Paul Burkhead, accompanied by DCM and Econoff (notetaker) met in separate meetings with Kuwait Chamber of Commerce and Industry Deputy Director Rabah Al-Rabah, Ministry of Commerce Undersecretary Hamid

Al-Ghanim, Ministry of Communications Director of Operations for the Information Sector Ali Al-Zabin, Ministry of Finance Assistance Undersecretary Ahmad Hamza, Ministry of Information Assistant Undersecretary for Press and Publications Ibrahim Al-Nouh, and Advisor to His Highness the Amir Dr. Yousef Al-Ebraheem to follow-up on discussions held in Washington, DC in February related to the Trade and Investment Framework Agreement (TIFA) process. (The Ambassador attended the meeting with Al-Ebraheem.) Burkhead acknowledged Kuwait's progress in several areas, but reiterated that significant hurdles remain to reaching a Free Trade Agreement (FTA), especially important reform legislation.

TIFA/FTA: Amiri Advisor Wants TIFA Council Meeting In May

¶4. (SBU) Ministry of Commerce Undersecretary Hamid Al-Ghanim, who also heads Kuwait's TIFA delegation, thanked Burkhead for his visit and said that there is support for the TIFA process in both the Parliament and Cabinet. Al-Ghanim proposed holding a TIFA Council meeting in Kuwait this year. He said that the best time for the meeting would be in September or October, both because the weather would be better and because it would give the Parliament time to pass one or more of the new reform laws. Addressing the new Conformity Assessment Scheme (CAS), a replacement for the International Conformity Certification Program (ICCP) import pre-inspection regime, Burkhead said that while the CAS is somewhat more streamlined than the old ICCP, USTR would like to see Kuwaiti regulation come into line with WTO standards. Burkhead offered to provide Al-Ghanim with written comments that USTR had previously submitted to the WTO upon Kuwait's announcement of the CAS. Al-Ghanim said that he is confident

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that the CAS issue can be addressed prior to the next TIFA Council meeting.

¶5. (SBU) In a later meeting Burkhead met Dr. Yousef Al-Ebraheem, Economic Advisor to the Amir. Al-Ibrahim recalled recent comments by Prime Minister Shaykh Nasser Al-Mohammed Al-Sabah highlighting the importance of an FTA to the GOK, quoting him that "we need this as soon as possible." Al-Ebraheem, while acknowledging that numerous issues remain unsolved, stated his preference for a TIFA Council meeting as soon as possible, as early as May 2006. He said that while many problems will require legislative action and are therefore unlikely to be resolved by May, such issues as an Open Skies agreement and the ICCP problem could be completed soon. Burkhead welcomed an earlier TIFA Council meeting, saying the only potential obstacle would be the travel schedules of the USTR team.

¶6. (SBU) An FTA, Al-Ebraheem said, "would help Kuwait a lot" by bringing outdated laws and regulations in line with international standards. Additionally, Al-Ebraheem noted that Kuwait "will play a major role in rebuilding Iraq," something that would be facilitated by an FTA. Burkhead welcomed Al-Ebraheem's enthusiasm and optimism, but cautioned that USTR's FTA template addresses all reform issues and cannot "go soft on any of them." USTR, he said, will be reluctant to launch full-scale FTA negotiations until both sides are confident of success. In response to the Ambassador's question, Al-Ebraheem said that while the Commerce Ministry is still taking the lead on the TIFA, he will propose formation of a ministerial committee which would include a designated chief negotiator. In making his argument for an accelerated TIFA/FTA process, Al-Ebraheem alluded to the Parliament's fickle appetite for reform, saying that "we should move as quickly as possible before there is a change in the National Assembly's mood."

Kuwait Encouraged to Follow Bahrain and Oman Example

¶ 7. (SBU) Al-Ebraheem asked how the issue of the Arab League boycott of Israel fits into the FTA picture, and how the recent Bahraini and Omani FTAs addressed it. Burkhead responded that abolition of the boycott is not a precondition to an FTA since it is a bilateral agreement, but many members of Congress would object to an agreement with a country that implements the boycott. Al-Ebraheem suggested strongly that the boycott not be raised until the very end of negotiations, because to do so earlier "will kill" an FTA's prospects in Kuwait. The Ambassador agreed that this may be prudent, but stressed that there is no way for Kuwait to avoid it.

¶ 8. (SBU) Rabah Al-Rabah of the Kuwait Chamber of Commerce and Industry (KCCI) said he often receives calls from the private sector asking how far along the TIFA process is, as well as inquiries about potential business opportunities under an FTA. Al-Rabah said signing an FTA before the summer 2007 Kuwaiti parliamentary elections is important, because if an agreement were not completed before the elections it would have "only a slim chance" of passing through Parliament before mid-2008. Burkhead responded that an FTA by 2007 is probably unrealistic, and that before USTR will launch full-scale FTA negotiations, Kuwait needs to complete several regulatory and legal reforms. He suggested that Al-Rabah read the recent Bahrain and Oman FTAs to get a sense of the complete range of USG reform priorities.

IPR, Tax, and Labor Laws All Pending

¶ 9. (SBU) On pending legislation, Amiri Advisor Al-Ebraheem agreed that the copyright law "absolutely" needs revision, but also stated that better implementation of existing law and greater cooperation between the ministries of Information and Commerce is necessary. Commerce U/S Al-Ghanim said that IPR is the "most important subject" for Kuwait in the TIFA process, and he encouraged Burkhead to push the Ministry of Information to complete the necessary amendments to the current law and forward them to Parliament. KCCI Deputy Director Al-Rabah disagreed, stating that the current copyright law is sufficient and needs no reform. Burkhead explained that the current law is not in compliance with TRIPS and does not contain deterrent penalties, and the DCM noted that while Kuwait has made real progress in the last few years, much work needs to be done. Because this law must be passed as a prerequisite for full FTA negotiations, Burkhead encouraged KCCI members to lobby Parliament for its

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passage.

IPR Head Planning Public Awareness Campaign

¶ 10. (SBU) Ministry of Information Assistant Undersecretary for Press and Publications Ibrahim Al-Nouh provided an overview of his Ministry's efforts to protect IPR in Kuwait. He said that the interministerial committee on IPR will meet again in April to review the structure of inspection teams. Al-Nouh acknowledged the importance of stiffer penalties for violators, and said that he has been working with the Ministry of Justice on this issue. He also said that ignorance of IPR is a problem in Kuwait, and that it "takes time to change our mentality." His Ministry will undertake a public awareness campaign to explain that buying pirated products is "haram," or forbidden, in a religious sense. Responding to a question about the status of amendments to the new draft copyright law, Al-Nouh said that the amendments are still being prepared by the Ministry and did not say when they might be completed. Burkhead offered USTR's help in reviewing the draft to ensure that it will be consistent with TRIPS and FTA expectations. He reiterated the critical importance of IPR protection to the prospects of an FTA.

¶ 11. (SBU) Al-Nouh said that the difference in price between genuine and counterfeit products is a major hindrance to

progress on IPR. Rights-holders should consider lowering prices, he said, as it is the only way to dissuade consumers from buying pirated goods. Al-Nouh said he believes "it will be impossible, over time, for companies to maintain high prices in Kuwait." Burkhead acknowledged the argument, but said that it is not realistic to expect prices of genuine product to be lowered. Instead, he countered, the price differential is best bridged by stringent enforcement that makes trafficking in pirated goods more expensive, resulting in higher prices for counterfeit goods.

Everyone "Suffering" with Taxes

¶12. (SBU) During the meeting with Finance Assistant Undersecretary Ahmad Al-Failakawi, also attended by Nabil Jalil, Director of Tax Liability and Planning, Burkhead reiterated that Kuwait's opaque taxation regime is a serious barrier to foreign investment. A transparent, predictable tax structure is critical, Burkhead said, because foreign companies will be reluctant to invest in Kuwait without one. Burkhead said the tax problem faced by U.S. and other foreign companies in Kuwait must be addressed before an FTA could be reached. Jalil responded, saying that Kuwait is "suffering" from the current law, but that the Ministry has drafted, with assistance from the International Bureau of Fiscal Documentation (IBFD) and the IMF, a new law that embraces WTO tax principles. He said the draft law is now with the Parliament.

¶13. (SBU) According to Jalil, the new draft law stipulates a 25% flat rate for businesses, foreign and domestic. He said the Parliament is likely to make changes to the draft law, including a lower tax rate. Because MPs will be reluctant to impose taxes on Kuwaiti companies with an election on the horizon, Jalil said that the law may look significantly different when passed. The DCM recommended that the GOK allow USG tax experts to review the draft legislation before passage to ensure that additional revisions will not be necessary in the later stages of the TIFA/FTA process to comply with USTR expectations. Both Al-Failakawi and Jalil advocated negotiating a Double Taxation Treaty (DTT) between the U.S. and Kuwait, with Jalil saying that a DTT should come first before an FTA. Burkhead responded that he will pass along the notion to the U.S. Treasury Department, but that in general the USG prefers to address all issues under the FTA umbrella, not through agreements that would likely need revision during subsequent FTA negotiations.

¶14. (SBU) Commerce U/S Al-Ghanim also noted that the taxation problem affecting foreign companies in Kuwait "has become worse than we expected." He said that the PM has instructed the Finance Ministry to "freeze" the law and that a new draft law has passed the Cabinet and is now with the Parliament. Also with the Parliament is a law that would create an independent authority to oversee implementation of the foreign investment law. Al-Ebraheem said that the Prime Minister is anxious to fix the taxation problem and that he "doesn't know what happened at the Finance Ministry" when they suddenly began sending retroactive tax bills to foreign

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companies. However, because these tax disputes are now in the courts, there is little that the Finance Ministry can do aside from wait for Parliament to pass the new law. Al-Ebraheem agreed with the Ambassador that these are tough legislative issues, noting that labor reform will be also particularly difficult and will likely be a prolonged process.

AT&T Billing Dispute Update

¶15. (SBU) During the meeting with Commerce U/S Al-Ghanim, Burkhead spoke with Ministry of Communications Director of Operations for the Information Sector Ali Al-Zabin, who provided an update on the ongoing billing dispute between the

GOK and AT&T. Al-Zabin said that the recent death of AT&T's lead negotiator was a setback, and that he has "had to start over with the new guy." He said all records have been scanned, verified, and sent to AT&T, and that his staff is working to identify the areas of dispute. According to Al-Zabin, the dispute is primarily over currency conversion rates as they relate to billing transactions over a six year period. He said he is working with the Central Bank of Kuwait (CBK) to verify the exact exchange rates on each transaction date.

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